IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION NO :24498 of 2006

Dated: 24th November 2006.

Between:
M/s. S.B.Slabs & Marbles, Madinaguda, Hyderabad.

..... PETITIONER

AND

Commercial Tax Officer, Madhapur Circle, Hyderabad
and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

W.P.NO.24498 OF 2006

ORAL ORDER:
(Per the Hon'ble Sri Justice J.Chelameswar)

The petitioner is a partnership firm and a registered dealer both under the A.P.G.S.T. Act and the A.P.V.A.T. Act and as described in the affidavit filed in support of the writ petition, engaged in the business of "selling, laying, polishing of marble stones and other slabs and stones". For the assessment year 2002-03, the petitioner's liability to pay tax under the A.P.G.S.T. Act came to be determined by the 1st respondent by his order dated 02-05-2006. The claim of the petitioner that its case is required to be assessed under the provisions of Section 5G of the A.P.G.S.T. Act, was accepted by the 1st respondent, but however, he revised the order in exercise of the powers under Section 14(4) of the act, and came to the conclusion that the petitioner is liable to pay a higher amount of tax, on the ground that the petitioner is not entitled to be assessed under Section 5G of the Act. Challenging the said decision, the petitioner carried the matter in appeal before the 2nd respondent. However, there was some delay in presenting the appeal, therefore, the petitioner also filed an application seeking condonation of the delay before the 2nd respondent and the same was dismissed by the impugned order. Hence, the present writ petition with the prayer as follows:

> " For the reasons stated in the accompanying affidavit, it is therefore prays that this Hon'ble Court may be pleased to issue any appropriate Writ, Order or Direction more particularly a

Writ of Certiorari and call for the records on the file of the second respondent in G I No. HYR/ 503/ 2006 dt. 24.7.06 and quash the same and grant the consequential relief by condoning the delay of 29 days in filing the appeal before the second respondent by the petitioner and directing the second respondent to admit and dispose of the appeal filed by the petitioner on merits and issue any other appropriate Writ, Order or Direction as this Hon'ble Court may be pleased to deem fit and proper."

Heard the learned Government Pleader for Commercial Tax.

The counsel, who was entrusted appeal-brief by the petitioner gave a personal affidavit explaining that there was some delay in his office in preferring the appeal. We have perused the affidavit filed by the counsel before the 2nd respondent. We are of the opinion that the 2nd respondent rejected the explanation without any reason.

In the circumstances, the writ petition is allowed as prayed for at the stage of admission, directing the 2nd respondent to consider the appeal of the petitioner on merits and dispose of the same in accordance with law.

J.Chelameswar, J

D.Appa Rao, J

24th November 2006
mrk